

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MICHAEL HARRIS</b>	)	
Claimant	)	
VS.	)	
	)	
<b>CARESTAF</b>	)	Docket No. 1,013,079
Respondent	)	
AND	)	
	)	
<b>COMMERCE AND INDUSTRY INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals the April 15, 2004 Order of Administrative Law Judge Bryce D. Benedict. Respondent was ordered to pay penalties in the amount of \$886 for failure to pay temporary total disability benefits which were granted from a January 26, 2004 Order.

**ISSUES**

- (1) Was respondent provided improper service of demand for compensation pursuant to K.S.A. 44-512a?
- (2) Did the Administrative Law Judge (ALJ) exceed his jurisdiction in granting the benefits ordered?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented, the Appeals Board (Board) finds that the Order for penalties assessed by the ALJ should be reversed.

The ALJ entered an Order for temporary total disability benefits on January 26, 2004. Claimant's attorney generated a demand letter on January 27, 2004, demanding compensation that had been ordered paid the day before. This demand for compensation was served on respondent on February 5, 2004.

The ALJ determined that respondent's failure to pay within 20 days of that demand was a violation of K.S.A. 44-512a. In his decision, the ALJ discussed several Board and appellate court decisions dealing with K.S.A. 44-512a and the demand for compensation. In particular, the ALJ criticized the Board's utilization of *Hallmark*.<sup>1</sup> The ALJ contended that the Board's reliance on *Hallmark* is misplaced, as the version of K.S.A. 2003 Supp. 44-556 discussed in *Hallmark* dealt with compensation which is due or payable 20 days after the Director files his or her award. However, a section of *Hallmark*, which applies to language that is still present in the statute today, notes "[a] statutory demand under 44-512a can only be effective for compensation awarded the claimant then due and unpaid."<sup>2</sup> *Hallmark* goes on to note that when payment of compensation is not delinquent, then there can be no valid statutory demand upon which to predicate a 44-512a action.<sup>3</sup>

The time period contained in *Hallmark* is not the relevant consideration. The relevant consideration under K.S.A. 44-512a deals with the statutory language involving compensation which is "not paid when due." Additionally, the written demand for payment mandated under K.S.A. 44-512a must state with particularity the items which are "claimed to be unpaid and past due." In this instance, there would be no compensation past due and unpaid the day after the Order was issued. The Board has continually held that demands for penalties must be served in a timely fashion pursuant to K.S.A. 44-512a. The Board has further held that demands served before the ten-day time period for appeal are premature.<sup>4</sup>

The Board finds that claimant's written demand served upon respondent was ineffective to predicate an action for penalties under K.S.A. 44-512a because the requested temporary total disability compensation was not past due.<sup>5</sup>

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated April 15, 2004, should be, and is hereby, reversed.

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<sup>1</sup> *Hallmark v. Dalton Construction Co.*, 206 Kan. 159, 476 P.2d 221 (1970).

<sup>2</sup> *Id.* at 161.

<sup>3</sup> *Id.* at 161.

<sup>4</sup> *Keller v. Sabreliner Corporation*, No. 251,293, 2002 WL 598480 (Kan. WCAB Mar. 29, 2002); *Stone v. Atchison Casting Corporation*, No. 250,031, 2003 WL 1918542 (Kan. WCAB Mar. 31, 2003); *Jordan v. Pyle Construction*, No. 253,664, 2002 WL 31602574 (Kan. WCAB Oct. 30, 2002).

<sup>5</sup> K.S.A. 44-512a.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2004.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Judy A. Pope, Attorney for Claimant  
       Robert J. Wonnell, Attorney for Respondent and its Insurance Carrier  
       Bryce D. Benedict, Administrative Law Judge  
       Paula S. Greathouse, Workers Compensation Director